IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 5090 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NAIKNAVARE & ASSOCIATES THRO' HEMANT DATTAJI NAIKNAVAR & 4 - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR PR ABICHANDANI for Applicant(s) : 1 - 5.
MR MR MENGDE, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
NANAVATI & NANAVATI for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 01/08/2007

ORAL JUDGMENT

1. Rule. Shri M.R.Mengde, learned APP waives service of rule on behalf of the respondent No.1 – State and Shri Devang Nanavati, learned

advocate waives service of rule on behalf of the respondent No.2 – original complainant.

2. Present application has been filed under section 482 of the Criminal Procedure Code by the applicants – original accused Nos.7 to 11 as partnership firm - M/s. Naikanavare & Associates and the partners of the said firm for an appropriate order of quashing and setting aside Criminal Complaint No.58/2004 – Inquiry Case No.45/2005 subsequently numbered as Criminal Case No.25780/2006 pending in the Court of the learned JMFC, First Court, Surat.

3. A criminal complaint has been filed before the learned JMFC, First Court, Surat against the applicants and others by the respondent No.2 herein – original complainant for the offences punishable under sections 138 and 141 of the Negotiable Instrument Act; 1881 (hereinafter referred to as “the N.I.Act” for short) and for the offences punishable under sections 406, 420, 114 & 120(B) of the I.P.C. and the learned trial

Court has issued summons against all the accused for the offence under section 138 of the N.I.Act. Being aggrieved and dissatisfied with the same, the applicants herein – original accused Nos.7 to 11 have preferred present application for quashing and setting aside the said complaint qua them.

4. Shri Abhichandani, learned advocate appearing for the applicants has submitted that the applicant No.1 is a partnership firm and the applicant Nos.2 to 5 are the partners of the said partnership firm and the cheque in question has been issued by the original accused No.1 – a private limited company namely M/s. Naiknavare Associates Promoters & Builders Private Limited. It is submitted that neither the applicant No.1 herein – original accused No.7 has issued the cheque in question which has been dishonoured nor they are in any way connected with the offence by which it can be said that the applicants have committed offence under section 138 of the N.I.Act. It is submitted that when

neither the applicants have signed the cheque in question nor they are the directors of the company who has issued the cheque, no offence has been committed by the applicants under section 138 of the N.I.Act as alleged. It is further submitted that it is nowhere stated in the complaint as to how the applicants have committed offence under section 138 of the N.I.Act and therefore, it is requested to quash and set aside the said complaint qua the applicants for the offence under section 138 of the N.I.Act.

5. Shri Devang Nanavati, learned advocate appearing for the respondent No.2 – original complainant has tried his best to satisfy the Court to the effect that the case is made out against the applicants but has failed. It is submitted by him that as the applicants were the parties to the tri-party agreement dated 8.7.2003 and the original accused No. 7 – applicant No.1 herein being a party to the second part to the said agreement and the complainant company being

third party to the said agreement and the accused had towards legally enforceable debts and other liabilities of Rs.71,50,000/- as reflected in the said agreement had given a cheque which is dishonoured and therefore, it cannot be said that the applicants have committed any offence as alleged under section 138 of the N.I.Act and therefore, it is requested to dismiss present application.

6. Shri M.R.Mengde, learned APP has requested to pass an appropriate order considering the averments in the complaint.

7. Heard the learned advocates appearing on behalf of the respective parties.

8. On bare reading of the complaint and the averments in the complaint it appears that there was an agreement dated 8.7.2003 which was signed by the original accused No.1, complainant and the original accused No.7 – applicant No.1 herein and towards the legal debts, a cheque was

issued by the original accused No.1 – company amounting to Rs.11,50,000/- in favour of the respondent No.2 – original complainant and the said cheque has been dishonoured. The applicant Nos.2 to 5 are joined as partners of the applicant No.1 partnership firm (original accused No.7). It is admitted position that the cheque in question has been issued by the original accused No.1 – company and original accused Nos.2 to 6 are the directors of the said company. On bare reading of the complaint, no case is made out against the applicants for the offence under section 138 of the N.I.Act as applicant No.1 – partnership firm has not issued the cheque and/or signed the cheque and merely because the applicant No.1 – original accused No.7 – partnership firm was a party to the agreement dated 8.7.2003, it cannot be said that the applicant No.1 herein – original accused No.7 and other applicants being partners of the applicant No.1 have committed offence under section 138 of the N.I.Act. Under the circumstances to continue criminal prosecution

against the applicants would be abuse of process of law and even considering the averments in the complaint on its face and considering the same in its entirety, no case is made out against the applicants for commission of the offence under section 138 of the N.I.Act and under the circumstances, the impugned complaint / criminal case requires to be quashed and set aside so far as the applicants are concerned for the offence under section 138 of the N.I.Act.

9. For the reasons stated above, application succeeds. Criminal complaint No.58/2004 – Inquiry Case No.45/2005 subsequently numbered as Criminal Case No.25780/2006 pending in the Court of the learned JMFC, First Court, Surat is hereby quashed and set aside qua the applicants – original accused Nos.7 to 11 for the offence under section 138 of the N.I.Act. Rule is made absolute to the aforesaid extent.

[M.R.Shah, J.]

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